

MAINE STATE HARNESS RACING COMMISSION
MINUTES OF MEETING
APRIL 12, 2018

Gambling Control Board Conference Room
Department of Public Safety
45 Commerce Drive, Augusta, Maine

Commission Members Present: Michael Timmons, Chair, Gary Reed, William McFarland, William Varney, and Michael Graham

Commission Members Absent: None.

Staff Members Present: Ron Guay, AAG, Henry Jennings, Carol Gauthier, Miles Greenleaf, Dennis May, Zachary Matzkin, and Ralph Canney

1. Call the Meeting to Order and Introductions: Michael Timmons, Chair

2. Review and Approval of Minutes

Commissioner McFarland made a motion to approve the minutes of February 8, 2018 as printed. Commissioner Graham seconded. Vote 3-0.

Review and Approval of Decision and Orders

None.

3. Adjudicatory Hearings:

- a. RE: David Nelson, Complaint Number 2017 MSHRC 36.** Mr. Nelson is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Nelson is the trainer of record for the horse "Bettor Angel". A blood sample obtained from Bettor Angel following the Tenth Race at the Windsor Fair on September 1, 2017 disclosed an elevated level of Dexamethasone. AAG, Guay stated for purposes of the record, this case has already been decided. The reason why is Mr. Sumner had requested a continuance for the last hearing and was denied the request. AAG, Guay told Mr. Sumner that he could participate by telephone and he provided evidence that he was medically unable to participate on that day; therefore, the case was set aside because there was indisputable proof that he could not participate and should have been granted a motion; but he was not in a position at that point in time to file a motion, so this case is being done over again. AAG, Guay qualified the Commissioners. He opened the case and asked Mr. Sumner if he agreed that Mr. Nelson was the trainer of record on September 1, 2017 for the horse "Bettor Angel" and that the horse raced on September 1, 2017 at Windsor Fair in the tenth race. Mr. Sumner stated yes. Mr. Sumner did not agree to the prohibited substance. Mr. Jennings moved for the admission of exhibits 1 through 10. Mr. Sumner did not object to the exhibits. AAG, Guay admitted the 10 exhibits. He gave Mr. Sumner his oath. Mr. Sumner stated that on September 1st the horse came up positive. He stated that on the 4th the horse should have had a positive too. He stated on November 26 a horse named Aunt Ethel which he drove and was trainer of got blood taken. It was the right horse but the lady had the wrong tubes in her hand. He stated that the chain of custody needs to be repaired and flawed. AAG, Guay gave Kaela Frith her oath. Mr. Sumner asked Ms. Frith if they noticed that the blood on Aunt Ethel was going to be put into a wrong horse's tube. Ms. Frith stated no, and that there is a process. She explained the process. Mr. Jennings asked Ms. Frith procedurally does the staff label the tubes before the blood is drawn? Ms. Frith stated absolutely not. AAG, Guay gave Zachary Matzkin his oath. Mr. Jennings asked questions of Dr. Matzkin. He asked Mr. Matzkin if a horse tested positive on September 1st at 14 pico grams does that guarantee and either on September 4th or two days later would it still be above the violation threshold. Dr. Matzkin stated no. Dr. Matzkin stated that if you look at our recommended guidelines for withdrawal, it's almost 72 hours with a normal dose should put you under 5 pico grams per milliliter and those guidelines are built in with some buffer. Commissioner Reed asked Mr. Sumner if David Nelson was the trainer of any of his horses prior to September 1st. Mr. Sumner

stated yes. His only statement is that his horse never would have dexamethasone in its system. Mr. Jennings stated that this is a standard drug case and exhibit 9 shows the level. It is a strict liability standard that this commission has a long history of hearing from trainers who are having difficulty explaining the exact cause of exceeding of a threshold. AAG, Guay closed the hearing for a finding. Commissioner Timmons asked for a motion. Commissioner McFarland made a motion based on the evidence presented from the state that a violation has occurred. Commissioner Graham seconded. Vote 5-0. Mr. Jennings stated that dexamethasone comes out as a drug Class 4 with a violation of Class C and that would be for a first offense as \$500 fine and return of purse. Mr. Sumner stated that he doesn't think that the trainer of record should get a \$500 fine for a first offense. Commissioner Timmons asked for a motion. Commissioner Graham made a motion to fine Mr. Nelson a \$500 fine and return of the purse within 30 days. Commissioner McFarland seconded. Vote 5-0.

- b. **RE: Karl Butterfield, Complaint Number 2018 MSHRC 01.** Mr. Butterfield is appealing the Department's denial of his 2018 driver/trainer license application. The Department issued a denial based on court records and records from another racing jurisdiction. AAG, Guay acting as presiding officer opened the case of Karl Butterfield. Caleb Gannon represented Mr. Butterfield. AAG, Mark Randlett represented MSHRC staff. AAG, Guay asked the Commissioners to leave the room to discuss some issues. Attorney Gannon requested a potential bias with Commissioner Timmons. AAG, Guay stated that he typically asks the Commissioners questions but he did not do that. He called Commissioner Timmons back for questioning. He asked Commissioner Timmons if he had any personal knowledge of Mr. Butterfield. Commissioner Timmons replied that he did not know the gentleman. Attorney Gannon asked Commissioner Timmons if he had any memory of an argument or dispute with Mr. Butterfield approximately two years ago at Cumberland County fairgrounds. Commissioner Timmons stated that he does not recall that if he did. It must be pretty minor if he did. AAG, Guay had the remaining Commissioners enter the room at this time. He qualified the Commissioners. All five Commissioners replied no to both questions. AAG, Guay stated what the basis of the denial was. The first basis is 8 MRS, Section 283, Reciprocal Disciplinary Action. The next section by the department is Chapter 17, Section 8, Unfitness to Participate. Then Chapter 17, Section 21, Penalties of Other Jurisdictions Enforced. The next section is Chapter 1, Section 10, 1-A, Grounds for Suspension, Revocation, Refusal or Denial of a License. Then we go to subsection 2. AAG, Randlett stated that there are 2 versions of Chapter 1, Section 10. Mr. Butterfield's application was received on December 28, 2017. The version of the rule that you are currently looking at now didn't go into effect until March of 2018. There is a version of the rule that was in effect when the application was received and then the rule was subsequently amended. So, the commission's staff has sited the prior version and or recent version of the rule based on whether or not it's up to the hearing officer which version of the rule applies here, but as a matter of caution we have sited both the rule in effect at the time of the application and as subsequently amended. AAG, Guay asked what the date of the denial was. AAG, Randlett stated March 21, 2018. AAG, Guay asked Attorney Gannon what his position on rules should they be looking at. Attorney Gannon stated that he doesn't have a strong position either way but he would indicate the rule when the application was made. AAG, Guay stated that they would go with the rules that were in place at the time of the application being received. Attorney Gannon has waived the timely Notice of Hearing. AAG, Randlett presented the following exhibits. Exhibit 1, Notice of Denial dated March 21, 2018; Exhibit 2, Notice of Hearing dated March 28, 2018; Exhibit 3, Amended Notice of Hearing dated April 3, 2018, and Exhibit 4, Mr. Butterfield's Driver/Trainer's License Application. Attorney Gannon objected to Exhibit 1, Notice of Denial first paragraph number one where it lists a series of documents from other states. AAG, Guay asked AAG, Randlett to respond without getting into any actual charges. AAG, Randlett stated this is the document that this hearing is based on. It is the actual denial of Mr. Butterfield. If you are going to exclude it than there needs to be some indication on the record that there was a notice of denial issued dated March 28, 2018 which is the basis for this hearing. AAG, Guay asked if we were not going to put Exhibit 1 in that there is a stipulation that the timely denial of a license for Mr. Butterfield and that denial was issued on March 21, 2018 and that the basis for the denial related to Chapter 1, Section 10, subsection 1-A, 8 MRS, Section 283, Chapter 1, Section 10, subsection 1-A.5, and Chapter 17, Section 21. AAG, Randlett stated that he would agree with that stipulation; however, he would ask the hearing officer what to do is at this time to overrule the objection to the Exhibit 1; he would ask that you put a hold on Exhibit 1 and make a determination with the respect to the

admissibility of those allegations, and if any of those allegations are excluded, then we would rely on the stipulation. AAG, Guay stated that the stipulation would go in if you agree and he would withhold his ruling on Exhibit 1. Attorney Gannon stated yes, he agreed. He also had similar objections to Exhibits 2 and 3, that ground is referenced which is more prejudice. AAG, Randlett stated that he doesn't think there is any prejudice here. It is a notice of denial. It is the basis for the denial. AAG, Guay stated that he is going to overrule it. It is not attributing any specific facts that may be excluded or prejudicial. He is also going to overrule the objection to Exhibit 3. Attorney Gannon stated that he has an objection to Exhibit 4 too. What concerns him is questions 3 and 4 on Mr. Butterfield's application. AAG, Guay stated that he is also going to overrule on Exhibit 4 too, and allow it because this is his application and this is how Mr. Butterfield answered it. He stated that Attorney Gannon will have an opportunity to provide argument about that specific issue. AAG, Guay admitted Exhibits 2, 3, and 4. He would put Exhibit 1 aside for now. AAG, Randlett stated that the department staff reviewed Mr. Butterfield's application and based on certain information and concerns that they had; they conducted an investigation regarding Mr. Butterfield, and based on information they received the department staff determined there were several grounds for denying Mr. Butterfield his license. AAG, Guay asked Attorney Gannon if he had any witnesses. Attorney Gannon stated that he would reserve his opening. AAG, Randlett called Mr. Henry Jennings. AAG, Guay gave Mr. Jennings his oath. AAG, Randlett asked questions of Mr. Jennings. He asked Mr. Jennings to identify Exhibit 5. Attorney Gannon objected to Exhibit 5. AAG, Guay stated that he was going to overrule his objection. Mr. Jennings stated that Exhibit 5 was a finding and order issued in 2003 from New York State Racing and Wagering Board division of harness racing. This document was an attachment to Mr. Butterfield's application. AAG, Randlett moved for the admission of Exhibit 5. Attorney Gannon objected to the document in terms of relevance. AAG, Guay stated that document is just shy of 15 years old. The relevance is being introduced as evidence of reciprocal discipline. AAG, Randlett stated that this is evidence of action taken by the State of New York with respect to reciprocal license action taken by that state by Mr. Butterfield regarding harness racing. Attorney Gannon stated in reference to exhibit 3 where it indicates Mr. Butterfield's license has been currently refused, denied, suspended, or revoked. That is not the case. AAG, Randlett stated that the department disagrees with that characterization. Title 8, Section 283, Reciprocal Disciplinary Action requires the department to obtain current listings from jurisdictions of persons in harness racing occupations who have been refused a license or who have had their license revoked or suspended. The commission shall refuse to license or shall suspend the license of any person whose license is currently refused, revoked or suspended in another jurisdiction. There is disciplinary action taken from another state. Chapter 17, Section 21 also says that all penalties imposed by any Racing Commission in any racing jurisdiction shall be recognized and enforced by this Commission unless application is made for a hearing before this Commission wherein the applicant must show cause as to why such penalty should not be enforced against him/her in this state. Exhibit 5 shows that the State of New York took action against Mr. Butterfield to expel him from participation in harness racing in the State of New York, and oppose against him a fine for certain action he engaged in conduct in harness racing without a license. Attorney Gannon disagrees with the weight verses admissibility argument in that this document given its age it is more prejudicial than punitive. It does not support the denial on that ground that a license is currently refused, denied, suspended or revoked. AAG, Randlett stated that those are issues for the Commission to decide. AAG, Guay is struggling on the relevance. AAG, Randlett stated that there is more the issue of reciprocity with respect to this document. It also goes to other rule issues for financial responsibility, confidence of the wagering public in the harness racing industry. This is an existing issue and it's up to the Commission to decide whether or not it should be giving any value. AAG, Guay stated that this has to be relevant in order for it to come in. Chapter 21, Section 14, Subsection 4. **Written evidence, exception.** No sworn written evidence shall be admitted unless the author is available for cross examination or subject to subpoena, except for good cause shown. AAG, Randlett moved for the admission of Exhibit 6. Attorney Gannon objected to Exhibit 6 for the reason that it is a statement from Christin Embler of New York State Gaming Commission that makes a statement in that email that he would certainly like to cross-examine that person on; especially, to the fact that it indicates that a fine has not been paid when it has. AAG, Randlett had nothing else to say. AAG, Guay stated that the written statement pertains to a governmental action. He interprets it to be more of a government record even through it is in a form of an email. He allowed Exhibit 6 in. AAG, Randlett asked Mr. Jennings to explain Exhibit 6. Mr.

Jennings stated that there are two reasons why Mr. Butterfield was denied a license. One is financial responsibility. Mr. Butterfield did not pay his \$3,000 fine and two is he is not in good standing in the State of New York. Mr. Jennings stated that in Chapter 1, Section 10 refers to financial responsibility and Title 8, Section 283 and Chapter 17 refers to reciprocity. AAG, Randlett asked AAG, Guay to take a look at Exhibit 9. Attorney Gannon objected to Exhibit 9. The date the document refers to is 2005. Sworn document and the author is not available for cross-examination. The length of time which has passed since this document is dated pertaining to Title 5, Section 5303. AAG, Randlett stated he would reply to the hearsay aspect; if you rule to exclude it on that basis, he is going to rest and closed this case. AAG, Guay stated that he is not going to overrule that objection. AAG, Randlett stated in regards to the date of the conviction, this is a conviction that relates directly to a factor that is a basis for a denial of a license under the Commission's rules. It is up to the Commission what weight to give to this conviction given its age as opposed to its admissibility. AAG, Guay stated that it comes back to relevance. What would this evidence tend to prove and to what basis is it relevant? AAG, Randlett stated that it is relevant with respect to the issue of financial responsibility. Chapter 1, Section 10-A, Subsection 2; Chapter 17, Subsection 8; and Chapter 17, Section 2, Subsection 1.b & c. AAG, Guay stated that there is guidance in the APA in terms of how recent it has to be. There is a three-year limitation. AAG, Randlett stated yes; however, there is an exception. There is no time limitation for consideration of an applicant/licensees conduct which gives rise to criminal conviction if that conduct is otherwise a ground for disciplinary action against a licensee. Attorney Gannon stated that he would just reiterate what has already been discussed in regards to 5303 that it references the three-year timeframe of course we are talking about much longer than that. If the interpretation that's been put forth with regards to the last sentence of Section 5303 were going to prevail then that would basically render every sentence before that in that same paragraph meaningless because there are general provisions regarding grounds to deny a license that could incorporate any type of conviction. AAG, Randlett stated that is the law, and if we accept the argument being provided by Mr. Butterfield's attorney if it could not be considered that would render the final sentence providing for that exception meaningless. AAG, Guay stated that this goes to relevance. The rule is that a Board licensing board for occupational license can consider certain things convictions if it occurs within three years. Mr. Randlett you are pointing out the exception. If the exception is found not to apply, then the evidence would not be admissible because it would not be relevant because it is beyond the three-year time period; so, the question becomes parsing out that last sentence. You have correctly asserted that these charges could be considered and the sections that you point to relating to licensing. The sentence talks about disciplinary action. The conduct itself would give rise to and in the licensing practice there is a distinction between licensing and suitability verses conduct that gives rise to sanctions, and the conduct that would give rise to disciplinary action generally relates to the subject matter that's being regulated. So, if the conduct related to harness racing then that conduct could have resulted in a fine, a suspension, or some type of disciplinary action. Suitability in general in terms of licensing is not disciplinary action, it's suitability. Based on that distinction, he does not see an element in any of these convictions that would relate to the conduct of harness racing. AAG, Randlett stated that he does. There are two very specific rules that apply. Chapter 17, Section 2, Subsection 1, **Licensing and License Renewals**. The Commission may refuse to issue a license or to renew any and all of a person's licenses in any of the following circumstances. He stated that it's a denial of a renewal which is a disciplinary action. So, if refusing or denying a renewal of a license does not fall within that ambit that's ok he would respectfully disagree that a refusal of a renewal of a license is a disciplinary action based on conduct. He would also point out Chapter 17, Section 8, is even more specific. **Unfitness to participate**. Says, any person whose character and general fitness are such that continued participation in harness racing is inconsistent with the public interest and the best interests of racing shall be suspended. AAG, Guay stated that he looks at the last part of that and it says, not to exceed one year. These events occurred in 2005 presumably, the discipline that would have been available at that time would have been to not to exceed one year. How do we bootstrap that into 2018? AAG, Randlett stated that he respectfully disagrees with him. The statute and the statutory exception says that it could be consideration when it's grounds for disciplinary action under the license not created to have a distinction with regard to the length of any disciplinary action or the nature of any disciplinary action; it just says subject to disciplinary action. This is, whether it's a year, six months, or five years. AAG, Guay stated that he is going to sustain the object. He doesn't think the criminal conviction are relative to the sections you cited. AAG, Randlett had no other exhibits. Attorney Gannon asked

questions of Mr. Jennings. He asked Mr. Jennings in terms of admissible evidence that's been presented today what he could point to on the grounds of financial irresponsibility on the part of Mr. Butterfield. Mr. Jennings stated exhibit 6. Attorney Gannon stated that looking at exhibit 6 it references an unpaid fine is that what you mean. Mr. Jennings stated correct. Attorney Gannon asked if there were any other basis that you can articulate today that forms the basis for your denial on the grounds of financial irresponsibility. Mr. Jennings stated none that is supported by exhibit. Attorney Gannon asked Mr. Jennings if he knows whether that fine has been paid or not. Mr. Jennings stated based on his knowledge that exhibit 6 stands on its own merit. Attorney Gannon asked Mr. Jennings if in fact that fine was paid would that change your analyses on the grounds of financial irresponsibility at all. Mr. Jennings stated that it might have some influence but he would still point to the fact that when a fine is left unpaid for a period of fifteen years it calls into question financial irresponsibility. Attorney Gannon stated that another ground that you articulated was, unfit for racing. The evidence presented today, what can you point to that supports that conclusion. Mr. Jennings stated that based on the exhibits admitted he has nothing that he can refer to that speaks to general fitness of Mr. Butterfield. Attorney Gannon had nothing further for this witness. Commissioner Timmons stated if there was proof that the fine was paid. Attorney Gannon stated that he would have Mr. Butterfield testify to paying the fine. AAG, Guay gave Mr. Butterfield his oath. Attorney Gannon asked questions of Mr. Butterfield. Mr. Butterfield stated that he sent a cashier's check on April 9, 2018 to New York to pay his fine. Attorney Gannon moved for the admission of Exhibit L1. There was no objection to the admission of Exhibit L1. Mr. Butterfield presented 7 credit cards. He also stated that he has a general trainer's license with the USTA. AAG, Randlett asked Mr. Butterfield why he didn't pay the fine sooner. Mr. Butterfield stated that he didn't know he had a fine. Commissioner Reed asked Mr. Butterfield in response to question 4 on your application which states "Have you been indicted or convicted of a crime or has a criminal complaint been filed against you." You indicated yes and the question goes on to say what state and when, and you didn't respond at all. Mr. Butterfield didn't know he had to put the answer there he submitted the documentation. Commissioner Graham asked Mr. Butterfield in the past 12 years have you had any complaints against you. Mr. Butterfield stated not at all. He actually owns five businesses in the State of Maine. Commissioner McFarland asked Mr. Butterfield how he could not know he didn't have a \$3,000 fine in New York. Attorney Gannon objected to that question. Mr. Butterfield stated that the fine did have to do with harness racing in New York. He did not reapply for a license in New York. Commissioner Timmons asked Mr. Butterfield if he ever raced a horse in New York. Mr. Butterfield stated no. He raced in Florida and Canada. AAG, Guay asked Mr. Butterfield if he held licenses previously. Mr. Butterfield stated in the '90' in Ontario, Quebec, and Pompano Park. AAG, Guay asked him when he got out of harness racing. Mr. Butterfield stated to be honest he didn't know. He did not have a license in New York. AAG, Guay asked Mr. Butterfield if he went to harness racing tracks. Mr. Butterfield stated yes, just as a patron. Commissioner Varney asked Mr. Butterfield if he ever had a hearing. Mr. Butterfield stated no. He didn't know he owed a fine until he applied for a license in Maine. AAG, Randlett asked Mr. Butterfield to look at exhibit 5. Did you attach this to your license application? Mr. Butterfield stated yes. AAG, Guay stated in terms of exhibit 4 is this the full application. Mr. Jennings stated that there was a large amount of attachments. AAG, Guay asked why they weren't included. AAG, Randlett stated that he excluded them. AAG, Guay asked why aren't they included. AAG, Randlett stated that they were independent relevance so he made a decision to attach as a separate exhibit. AAG, Guay stated to Attorney Gannon if your client submitted as part of the application why isn't that part of the application. Attorney Gannon stated that the application asks for and as you can see those questions are very broad so he wanted in good faith to attach anything that could fall under those questions, but it doesn't make them relevant to or admissible to these proceedings. AAG, Guay stated that your client disclosed it but at this point in time the disclosure does not waive. Attorney Gannon stated that would create a perverse incentive to any applicant if that were the case. Mr. Butterfield is being forthright as much as he can. AAG, Guay asked if exhibit 5 was attached to Mr. Butterfield's application. Attorney Gannon stated his understanding is yes, as well as the other exhibits except for exhibit 6. AAG, Randlett stated that there were several attachments to the application and Mr. Jennings or Mr. Greenleaf could answer that question better. AAG, Guay asked Mr. Jennings if exhibit 5 was attached to the application. Mr. Jennings stated yes. AAG, Guay asked if the attachment was supplied to him or did he ask for them. Mr. Jennings stated that it was supplied as an attached to the application. Mr. Greenleaf stated that exhibits 7, 8, and 9 were attached. AAG, Guay stated that his

rulings on exhibits 5 and 9 were based on that they were obtained as part of an independent investigation subsequent to the application. The fact that they were attached by the licensee to the application would change his view on them in terms of their admissibility. AAG, Randlett stated that if it makes a difference that they were attached to the application then he would move for the admission of exhibits 5, 7, 8, and 9. AAG, Guay stated that the state is moving for the admission on the basis that it should be part of exhibit 4. Attorney Gannon stated that his objection to the admission of these documents as an attachment to exhibit 4 is that clearly, they weren't thought of as being admissible as an attachment to that document or they would have been. The application is the form that is filled out by the applicant. The question as he has previously stated, there are several questions of broad applicability that participants should be expected and encouraged to answer fully; and to otherwise make an inadmissible document admissible solely for that reason does create perverse incentive to future applicants, and it would encourage people to not attach these things in order to avoid them being admissible. AAG, Guay stated that he would allow but he didn't know if the state was able to recreate the actual documents in exhibit 4 exactly as Mr. Butterfield tendered. He understands the objection that the application that was tendered by the licensee may have included material that is irrelevant to the decision. He will instruct the Commissioners during deliberations on relevance; however, he will allow a copy of what was actually submitted by the licensee to the department in. He will ask the state to withdraw 4 and put the document package back together and mark it as 4A or 10 and admit that, and then go into closing arguments and deliberations. AAG, Guay stated that due to limited access to a copier, AAG, Randlett handed exhibit 4A package as exhibits 4, 5, 7, 8, and 9. Attorney Gannon stated that his additional objection if these exhibits are going to be admitted as an attachment to the new exhibit 4A stating that these are the original filed as part of the application. AAG, Guay gave Mr. Greenleaf his oath. AAG, Randlett asked Mr. Greenleaf if he compiled what is now being exhibit 4A which is the application with exhibits that were attached to it. Mr. Greenleaf stated yes but not in the exact order. AAG, Randlett asked Mr. Greenleaf if he is satisfied that the exhibit 4A is an accurate representation of the application and attachments. Mr. Greenleaf stated yes. AAG, Guay stated that exhibit 4A is admitted and is being objected by Attorney Gannon. Attorney Gannon stated that the grounds of the denial of Mr. Butterfield's application is an unpaid fine. The payment has been submitted. The denial was made in error and he is asking for that error to be corrected. Please reconsider the denial and grant Mr. Butterfield his license. AAG, Randlett asked as a procedural issue on the issue on exhibit 1 stipulation that should go into effect. AAG, Guay stated that the stipulation on exhibit 1 is in effect and it still continues to be excluded. AAG, Randlett stated that the department staff believes when they denied this license there were several reasons under the rules based on Mr. Butterfield having failed to pay a fine assessed by the State of New York in the amount of \$3,000. They are as follows, Chapter 1, Section 10, Subsection 1A, Financial Responsibility, which allows the department to deny a license if an applicant or licensee who has demonstrated financial irresponsibility by accumulating unpaid obligations, defaulting on obligations and so forth, that applies. Two, the department believes Chapter 17, Section 8, Unfit to Participate applies, any person whose character and general fitness are such that continued participation in harness racing is inconsistent with the public interest and the best interests of racing generally. Thirdly, the department believes Chapter 17, Section 2, Subsection 1C.1 applies, conduct found to pose a significant threat to harness racing by threatening the confidence of the wagering public. Mr. Butterfield was aware of the fine when he submitted his license. The only reason he paid the fine was because it would weigh in his favor for licensure. The public isn't going to have any faith in his integrity in his ability to be responsible, so on that basis he is asking the Commission to uphold the departments staff determination for license denial. AAG, Guay closed the hearing for deliberations. Commissioner Graham stated that it has been 10 to 12 years since he has done anything wrong other than he has not paid his fine and he paid that. He recommends giving Mr. Butterfield his license but make it conditional for a year. Commissioner Varney agrees with Commissioner Graham. He also stated that if someone in the state of Maine paid a fine they would get a license once it has been paid. He would grant Mr. Butterfield a license, conditionally. Commissioner McFarland stated that the department staff did their due diligence in this matter. He agrees with Commissioner Graham and Varney. Commissioner Reed stated that he is disinclined to issue Mr. Butterfield a license at this time. Commissioner McFarland stated that he also agrees with a probationary license. AAG, Guay stated as a point of clarification, he normally writes the decision and order up as a one year of probationary license with any sufficient evidence of a violation other than a race violation that there will be an immediate

suspension of a license until a hearing, but not for foot out of the stirrup. Commissioner Graham made a motion to grant Mr. Butterfield a probationary license for one year as AAG, Guay stated. Commissioner Varney seconded. Vote 3-2. Commissioners Timmons and Reed opposed.

- c. **Gloria Stevenson-Complaint Number 2018 MSHRC 02.** Ms. Stevenson was present and represented herself. AAG, Guay opened the proceeding on the case of Gloria Stevenson's preliminary license denial. He qualified the Commissioners. Mr. Jennings moved for the admission of exhibits 1 through 8. Exhibit 1, Notice of Denial; Exhibit 2, Notice of Hearing; Exhibit 3, Email Waiving the Proper Notice of Hearing; Exhibit 4, License application; Exhibits 5 through 8 are Documents from the State of Delaware Harness Racing Commission. AAG, Guay admitted the exhibits. There was an email from Diane Stevenson to Miles Greenleaf dated April 10, 2018 and labeled as Licensee Exhibit L1. AAG, Guay admitted this document without objection. Mr. Jennings stated that the reason the license is denied is because Ms. Stevenson is currently suspended in Delaware from March 22, 2018 until March 21, 2019. He stated that they obtained from the State of Delaware four rulings from the Presiding Judge. Failure to submit to a drug test which is the basis of the most recent suspension could be construed as pointing to other criteria which is listed in the notice of hearing. Now we are talking about the new Chapter 1. AAG, Guay gave Ms. Stevenson her oath. Ms. Stevenson stated that she had trouble with drugs. She was tested many times with no problems. On this particular day, she was asked to take a urine test but she could not go. They told her they would give her a refusal and that counts as a positive test. She didn't sign any papers. After that she went to rehab for two weeks and when she got out she went to her hearing. Ms. Stevenson asked if she could get her name released so that she could go to Maine; but that wasn't going to happen. The judge said to Ms. Stevenson that she would be suspended a year from this date and not to reapply to the State of Delaware. AAG, Guay gave Philip Sowers, Jr. his oath. Mr. Sowers stated that he hired Ms. Stevenson to help him with his horses. AAG, Guay gave Janet Davis her oath. Ms. Davis stated that the worst time for an addict is free time. She also stated that Mr. Sowers would keep her busy, and that Ms. Davis would like the Commission to give her sister a license. AAG, Guay gave Michael Stevenson his oath. Mr. Stevenson stated that he was where Ms. Stevenson was, but he had a support group to help him. He also stated that the Maritime Racing Commission sent him around to high schools to talk about his addiction. He would like the Commission to consider giving his sister her license. Ms. Stevenson stated that you can test her anytime and anywhere. She also stated that her life has changed. AAG, Guay closed the hearing for deliberations. Commissioner Timmons asked for any recommendations. Commissioner Graham asked if they could do this when the law says if you are under suspension somewhere else. Commissioner Varney stated that he had the same question but he wanted to know how can they do it. Commissioner Reed stated that was the most honest and compelling testimony he has heard since he has been in this room. He also stated that if there is any way that we could provide a temporary license for a term of a year, he would support it. Commissioner McFarland stated that he agrees one hundred percent. He doesn't know why they can't give a probationary license. Commissioner Varney made a motion to grant Gloria Stevenson a temporary groom's license for one year and any violations of any sort the license would be immediately suspended. Commissioner Reed seconded. Commissioner Timmons stated that Ms. Stevenson would agree that she is not going to miss any opportunity or refuse not to test. She is going to comply with the officials. Mr. Canney stated that she has to attend drug meetings on a regular basis. Provide the reports to the stewards. Be tested any time she is on the grounds and not just in the paddock. AAG, Guay stated that the state sites Section 283, Reciprocal disciplinary action where it says you shall deny. Under Chapter 1, Section 10.1-A **Grounds for Suspension, Revocation, Refusal or Denial of a License** of any person whose license is currently refused, revoked or suspended in another jurisdiction. Based on the case ruling you have created an escape hatch from the strict language of the statute. Provided the basis for action is consistent with Maine law the Commission may also consider good cause shown by the licensee or applicant. He is suggesting to them that what they are finding is that the Delaware action is not consistent with Maine Law. In that, under your rules for the violation that she would not have a 365 penalty under your rules. If you were just to follow your rules, you would not have the same result as Delaware. That is the basis if you all agree. What he would strongly suggest is that the department take a look at what the Maine rule is, and maybe not try to enforce a decision in another state if it goes beyond what the Maine rule allows. Ultimately, that is your basis for not giving full faith and credit to Delaware. What you are finding, however is based on the record and her

admission that she has a substance abuse issue that you do not feel comfortable giving her a full license but you are going to give her a probationary license. And for purposes of findings of fact is that you find that she has had previous drug violation as if it would have happened in Maine. Therefore, she is subject to the requirements under your Maine rules which include the mandatory drug testing. That is what the Stewards want. For purposes of your ruling, you would have found that she has had a second violation of the drug rule which requires a mandatory drug testing, and it shall continue until the retesting achieves three negative results. Testing schedule shall be at the discretion of the state stewards. The licensee shall not participate in harness racing meets until the mandatory drug testing achieves negative results. Do you want to waive the mandatory drug testing before she starts to participate or do you want to put that in place when she starts participating? Commissioner Timmons stated when she starts. He called for a vote. Vote 5-0.

4. **Review of the Rulemaking Comments and Hearing Record.** On November 22, 2017, a Notice of Agency Rulemaking Proposal was published in Maine's five daily newspapers marking the beginning of the official comment period for proposed amendments to Chapters 1, 3, 7, 11, 13, 15 and 17 of the Commission's rules. The Commission held a public hearing on the proposed amendments December 14, 2017. The deadline for written comments was the close of business on December 29, 2017. The Commission has reviewed Chapters 1, 3, 7, 13 and 15 and directed the staff relative to which amendments to accept. Amendments to Chapters 1, 3, 13 and 15 have been adopted. The Commission will now review Chapters 11 and 17. Mr. Jennings stated that they needed to go over Chapter 7, Section 9 Hopples on page 4. They discussed the way the sentence should read. Mr. Greenleaf read the sentence. Any owner or trainer who wishes to change any equipment other than hopples on a horse from one race to another shall notify the judges prior to the start of the race. Mr. Jennings stated that the first part of it is if you switch hopples you need to have a qualifying line. If you want to change any other equipment you just notify the judges. Ms. Perkins stated you don't have to let them know at the time of declaration. Mr. Greenleaf stated not for anything other than hopples. Mr. Jennings stated that we need to discuss Section 46.1 on page 22. He stated that under number one they added this clause to clarify who is responsible for the horse. Now under new item B, is what he believes is the consensus of the Commission is if the trainer is not in the paddock than it can be a groom, trainer, or owner who is designated as the responsible individual; and at the time that the horse enters the paddock you need to tell the horse identifier who that responsible individual is. Under item C, the Commission was all set with this change. They moved to Section 75 Purse Money on page 33. Mr. Jennings stated that this change was not part of the proposal. AAG, Guay stated that before the change you can only pay five positions but with this rule change it says that you can pay more than five. He stated that this would be a substantive change. He stated that if this is new language and you have already gone out for public hearing and received comments, you can only change the language of what you adopt as long as it's not substantial. He is not going to sign off on it and he is not expected to. Commissioner Varney stated to leave it the way it is. The way Mr. Jennings wrote it. Mr. Jennings stated that they will take up Chapter 11. On page 3 Section 2, Prohibited Substances, added language at the end of number 2. Page 9, Section 6 Out-of-Competition Testing under D to change state steward to Department Representative. Also on page 9, number 8 new language. Mr. Jennings stated that they will take up Chapter 17. On page 1, Section 2 Conduct Detrimental to the Sport, added Subsection 1 and on page 7, Section 5 Penalty Schedule for Violations of Chapter 11, added language at the end of the second paragraph. On page 9, under Class C added language in the tables. On page 10, Section 6 Repeat Offenders, added new language and also add the word "any" before the word prohibited in Subsections 1 through 4. Mr. Jennings stated that Section 8 is being deleted. AAG, Guay stated that Section 8 should be left in Chapter 17. Commissioners stated to leave this in Chapter 17. Commissioner McFarland stated that if we leave that in do we take out the wording "not to exceed one year". They agreed to delete that wording and add "to be decided by the Commission".
5. **Request for Commission Approval to Conduct Special Series During 2018.** Members of Maine's harness racing industry and the Commission's staff have been discussing the idea of hosting some specific racing series as a strategy to generate more interest, to boost marketing efforts—in the case of a potential "European Series", as a precursor to efforts at exporting Maine's racing signal to other countries. The MHHA and the Commission's staff are seeking Commission approval to host at least three different racing series during 2018:

- A “European Series” which involves at least 10 horses and a race distance of 1 ¼ miles;
- A “Young Gun” series that would feature Maine’s youngest drivers; and
- An “Always a Bridesmaid” series which will feature horses that have yet to win or otherwise are generally excluded from any significant winnings.

The Commission would have to approve the “European Series” (and possibly a minor rule amendment) because Chapter 7 limits the number of starters in an overnight event. The Commission would also need to approve the other two series because there is sentiment that the purse structure for these series should be altered to allow purse payments to more than the top five finishers in order to incentivize participation for the duration of the series. Henry Jennings had discussions with the Maine Harness Horsemen’s Association on these series of races. The idea behind the European Series is to try to export our signal to the European market. This is happening now. It might require a change in post time. There are two significant changes. They are interested in a race that is longer than the mile and races that involve at least 10 horses. Chapter 7 allows you to approve races with more than 8 entries. He stated that he could not find where it limited the number of trailers. The Commission would have to approve the number of additional starters or entries. These would have to be worked out with the venues and the people who broadcast the signal. We may be looking at restructuring the purse payout on all three of these. There will be a small tweak to Chapter 7. He talked to the Assistant Attorney General and asked him if adding language to Chapter 7, Section 75 would be ok because it limits purse distribution in overnight events for the first five finishers. The AG’s office stated that he could add a clause to the end of that section that would say “unless prior approval is received from the Commission”. Mr. Jennings stated that he would like the Commission’s blessing to have more than 8 starters. Commissioner Graham made a motion that they allow in special series to pay more than 5 placers and allow more than 8 horses in a race in special series only. Commissioner McFarland seconded. Vote 3-0. Commissioners Reed and Varney had left by this vote.

6. Discussion About the Commission Purchasing Head-On Cameras

At the Judges training on March 2, 2018, Michael Hall played a number of videos to facilitate discussion of various judges calls. Videos from other jurisdictions often include a head-on camera shot in the home stretch. The head-on camera provides a vantage point that better illustrates the relative position of the horses and drivers from a cross-section perspective. Some participants voiced support for acquiring head-on cameras in Maine. Moreover, there was discussion that the Commission may support allocation of funds for that purpose. Mr. Delisle stated that he employs you to follow their lead. He worked at Plainridge and they had front side and backside cameras and if you blew a call it was basically your fault. A head-on camera would make it so much simpler. Mr. Jennings stated that he tried to get some information on the price of the cameras. Commissioner McFarland stated that it is going to cost more money at a time when some of these people and Oxford just went out of business, and if it wasn’t for the Maine Harness Horsemen’s Association putting money in the budget and giving five fairs \$1,600 a day every day they race some of them wouldn’t be racing. If you’re going to require a backstretch camera, he would have to negotiate with International Sound and get it for \$70 or \$75 a day. Then this commission will have to eliminate the need to pay the starter. If you have a newer driver driving that starting car they are lucky if the car stops by the time the horses are already going by. Mr. Delisle stated that the camera is cut and dry. Mr. Cushing stated that each year at Fryeburg, Judge Roger Smith, Jr. has said, I know that horsemen was inside the pylons in the stretch but he can’t prove it. Commissioner McFarland stated that he would talk to Mr. Gurney about this issue. Commissioner Timmons stated that at the April meeting they would give an update.

7. Update on Collaborative Efforts to Improve Consistency of Judges Calls

Another outcome of the March 2 Judges meeting was that there was sentiment for trying to work collaboratively to improve consistency on the Judges calls covering racing violations at different tracks. The HRC staff has conducted follow-up discussions and a subsequent Judges Meeting was held on March 29, 2018. Discussions focused on three common types of Judges calls: whipping, posture and foot out of stirrup. The staff will update the Commission on its discussions. Mr. Jennings stated that they held a judges training on March 2, 2018. Mike Hall from the USTA came in and did a training and they were talking about a number of areas of racing violations. It began on how they could work collaboratively to try to gain a little

higher level of consistency in making the racing violation calls at the track. If there is a rule that the judges think that is not a good rule, it is not really the option of the judge to decide not to call that. The only option that the judge has is to bring that rule forward and make a petition if you will to the commission to change the rule. As a judge, you cannot decide which rule should be called and which should not be called. He stated that he followed up that discussion with a meeting with just the presiding judges. They discussed the calls that are very common. He drafted a memo that tried to capture the consensus and sent it around to the judges. They focused on the three major areas. Whipping, posture, and foot out of the stirrup and the overall point of the exercise is to try to get the judges to call things the same way. You need to have progressive fines. Mr. Jennings stated that they will allow a 45 degree tolerance. Frank Hall stated that the judges that were in attendance concurred that a 45 degree tolerance would be acceptable but anything beyond that you couldn't see. Dana Delisle stated that the rule says, drivers must be seated in an upright position and the handholds must be positioned with the drivers elbows in front of the chest. Judge Hall stated that this has been abused terribly. Mr. Delisle stated that he applauds the Commission staff and other judges for trying to get some consistency. We judge sometimes philosophically; we see things in our own minds. Michael Cushing stated that he doesn't mind the drivers laying back but he does wish they keep the handholds in position because if something should happen they would be in a pickle. Commissioner Timmons stated that if there are three judges up there and the younger ones are violating it a lot; then you say the younger ones don't agree with your philosophy you're still the judge, and if you don't deal with it and you want them to control it; then go ahead and do it. You're wrong. If the younger ones don't believe that, then it's wrong for you to not enforce it. Mr. Delisle stated that he agrees with Commissioner Timmons. He stated that it's consistency. If we're going to enforce the rules which he is in favor of, we want to do it consistently. Mr. Jennings stated that it's the Commission's job to decide what the rules are; it's not theirs. It's their job to enforce it. Ralph Canney stated that what happens is with the handholds is they get them back so far like this, and then when they lean back and they come up with that whip; they give it a hell of a crack.

8. Other Business:

- a. Continued discussion regarding the Commission's Consent Agreement Policy
- b. Mr. Jennings stated by statute the Commission is to review the Commission's budget by August. We are bringing the budget to you early because the Governor's Office wants the budget in early.

8. Public Comment

Stephen Cobbett made a short statement on behalf of Scarborough Downs that happened at Mr. Butterfield's hearing. He met with Mr. Butterfield in the hallway and he wanted to advise the Commission that Mr. Butterfield acknowledged that he is barred at Scarborough Downs and remains barred at Scarborough Downs. They will not allow him to race at Scarborough Downs and will not knowingly accept any entries which he trains or has ownership in. He acknowledged that fact out in the hallway and understood it.

Diann Perkins stated that she wanted to let the Commission know how many 2 and 3 year old continuations there were. There were 72 two year olds and 78 three year olds. She also stated that a stallion died this year which was Cash Cab. The owner did ask about bringing in a new stallion.

9. Schedule of Future Meetings:

April 25, 2018

10. Adjourn

4:00 p.m.